

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:09-cr-290

v.

HON. JANET T. NEFF

JAMES LEE McCULLER,

Defendant.

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**MEMORANDUM OPINION AND ORDER**

Defendant James Lee McCuller has filed a motion for modification or reduction of sentence (Dkt 546) pursuant to 18 U.S.C. §3582(c)(2) on the basis of Amendment 782 of the United States Sentencing Guidelines, made retroactive by the Sentencing Commission.

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 782 of the United States Sentencing Guidelines reduced by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties in U.S.S.G. §§ 2D1.1 and 2D1.11. These modifications were made retroactive effective November 1, 2014. U.S.S.G. § 1B1.10.

However, the defendant is ineligible for consideration of modification of sentence (Dkt 549), because the mandatory minimum sentence of imprisonment was imposed at sentencing. Counsel for defendant has filed a response (Dkt 554) to the report of eligibility and preserves this issue for future consideration should the law change.

Therefore, IT IS HEREBY ORDERED that Defendant's motion for modification of sentence (Dkt 546) pursuant to 18 U.S.C. § 3582(c)(2) is DENIED.

DATED: December 16, 2014

/s/ Janet T. Neff  
JANET T. NEFF  
United States District Judge